



UNITED STATES ATTORNEY'S OFFICE

Southern District of New York

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FOR IMMEDIATE RELEASE
Wednesday, April 4, 2012
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MANHATTAN U.S. ATTORNEY ANNOUNCES AGREEMENT BY TWO MAJOR CONSTRUCTION COMPANIES TO PAY \$7.5 MILLION TO SETTLE CIVIL FRAUD LAWSUIT RELATED TO EAST SIDE ACCESS PROJECT

*Joint Venture Formed by the Two Construction Companies Admits and Accepts Responsibility
for Violating Regulations Regarding Disadvantaged Business Enterprises*

Preet Bharara, the United States Attorney for the Southern District of New York, Barry L. Kluger, the Inspector General of the New York State Metropolitan Transportation Authority, Office of the Inspector General ("MTA-OIG"), and Douglas Shoemaker, Regional Special Agent-in-Charge of the U.S. Department of Transportation, Office of the Inspector General ("USDOT-OIG"), announced today that the United States has filed, and simultaneously settled, a civil fraud lawsuit against two major construction companies, DRAGADOS USA, INC., and JUDLAU CONTRACTING, INC., and their joint venture DRAGADOS/JUDLAU, JV, (the "Joint Venture") related to their contract to perform work on the MTA's East Side Access Project, a tunnel that will connect the Long Island Railroad to Grand Central Station. The lawsuit alleges that the defendants engaged in a scheme to avoid their obligation under federal law to hire disadvantaged business enterprises ("DBEs") by falsely representing to the MTA that they were paying millions of dollars to DBEs when, in fact, the work was being performed by non-DBE subcontractors. As part of the settlement, the defendants agreed to pay \$7.5 million, and the Joint Venture admitted and accepted responsibility for violating the DBE regulations governing their contract with the MTA. The settlement was approved today by U.S. District Judge Laura Taylor Swain.

Manhattan U.S. Attorney Preet Bharara said: "The Disadvantaged Business Enterprise Program plays an important role in ensuring that qualified, minority- and women-owned businesses get a fair shot at government contracts that eluded them for years. Compliance with the program's requirements is not optional. Today's settlement should make clear that we will not tolerate abuse of this program, and contractors that fail to abide by its rules will be held to account."

MTA Inspector General Barry Kluger said: “The multi-million dollar civil settlement announced today resulted from the joint efforts of the U.S. Attorney’s Office for the Southern District of New York, the U.S. Department of Transportation, Office of the Inspector General, and the Office of the MTA Inspector General to combat construction fraud and protect the integrity of the MTA’s Minority and Disadvantaged Business Enterprise Program. This DBE investigation and prosecution and others reflect the commitment of our Office and the MTA to create and maintain a level playing field on which all qualified minority- and women-owned businesses have a fair and equal opportunity to bid for, and participate in, all MTA projects. Once again, we are sending a clear message to the construction industry that we and our investigative and prosecutorial partners will continue to insist on strict compliance with the law and exact a heavy price from those who abuse the DBE Program.”

USDOT-OIG Regional Special Agent-in-Charge Douglas Shoemaker said: “DBE fraud harms the integrity of the DBE program and law-abiding contractors, including many small businesses, by defeating efforts to ensure a level playing field in which all firms can compete fairly for contracts. Our agents will continue to work with the Secretary of Transportation, the Administrator of the Federal Transit Administration, and other Federal, State, and local law enforcement and prosecutorial colleagues to expose and shut down DBE fraud schemes that adversely affect the public trust and DOT-assisted transit programs throughout New York and elsewhere.”

Background

The USDOT has funded approximately 42% of the total cost of the East Side Access Project. As a condition of receiving the funding, the MTA must establish goals for the participation of DBEs in the project, and contractors must make good faith efforts to meet the relevant goals. As part of its bid package for the East Side Access Project, the Joint Venture listed four DBEs as subcontractors and indicated that the total contract amount for DBEs would be approximately \$22 million. In July 2006, the MTA awarded the contract for the East Side Access Project to the Joint Venture with the understanding that it would meet its DBE obligations.

Under DBE regulations, general contractors can count payments to DBEs toward the goals of a project only if the DBE was responsible for the execution of the work of the contract; actually performed, managed, and supervised the work involved; and furnished the supervision, labor, and equipment necessary to perform its work. DBE regulations specifically prohibit “pass-through” arrangements in which the role of the DBE is limited to that of an extra participant in a transaction, contract, or project through which funds are passed.

The Dragados/Judlau Joint Venture’s Fraud and the Settlement

According to the Complaint, between June 2006 and November 2008, the Joint Venture submitted monthly reports to the MTA outlining its progress towards meeting its \$22 million DBE participation goal for the East Side Access Project. On each report, the Joint Venture certified that the information was accurate. By November 2008, the Joint Venture reported that it had paid about \$17 million to DBEs. In reality, it had paid less than \$5 million for work actually performed by DBEs. Furthermore, an internal audit, the results of which were reported

by the Joint Venture to the MTA, revealed that between June 2006 and November 2008, the Joint Venture paid three DBEs fees to act as pass-throughs while the work was actually being performed by non-DBE subcontractors.

Pursuant to the settlement agreement, the Joint Venture admits, acknowledges, and accepts responsibility for the fact that, between 2006 and 2008, monthly requisition forms and progress reports were submitted to the MTA by representatives of the Joint Venture acting on its behalf that represented that certain DBEs were performing certain work and being paid a certain amount under the East Side Access Contract when, in fact, payment was made to certain DBEs for participation as DBEs in instances and under circumstances where these firms did not qualify for consideration as DBEs for which the Joint Venture could claim credit, in violation of the Contract and the DBE Regulations. To compensate the United States for its 42% share of the damages for its fraud claims, the defendants agreed to pay \$6.5 million to the United States. The defendants also agreed to pay \$1 million to the MTA-OIG to cover its investigative costs.

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Mr. Bharara praised the MTA-OIG and the USDOT-OIG for their invaluable work on this case. He also thanked the U.S. Department of Labor, Office of Inspector General for its assistance.

The case is being handled by the Office's Civil Frauds Unit. Assistant U.S. Attorneys Lara Eshkenazi, Mara Trager, and Ellen London are in charge of the case.

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